

to Spouse. At the time of Decedent's death, Spouse was not a United States citizen. On Date 2, Spouse established and funded Trust 2, a Qualified Domestic Trust (QDOT) under § 2056A of the Internal Revenue Code with assets that passed to her from Decedent. Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return was timely filed, and Decedent's estate elected, on Schedule M, to treat Trust 2 as a QDOT.

On Date 3, Spouse became a U.S. citizen. It is represented that Spouse continuously resided in the United States from the date of Decedent's death and at all times thereafter remained a resident of the United States until her recent death on Date 4. It is further represented that no distributions were made from Trust 2 to Spouse.

The original co-trustees of Trust 2 were Son and U.S. Trustee, who is an individual U.S. citizen. Trust 2 names Bank 1 as successor co-trustee in the event of the death of an original co-trustee. On dates prior to Date 3, two events occurred: Bank 2, as successor in interest to Bank 1, took possession of the assets of Trust 2, and Son died. Thereafter, U.S. Trustee believed that Bank 2 was a successor co-trustee and that Bank 2 was managing all Trust 2 administrative matters, including tax matters. Bank 2, however, did not accept appointment as a co-trustee of Trust 2; thus, U.S. Trustee has been the sole trustee of Trust 2 since Son's death. U.S. Trustee is not experienced in U.S. estate tax matters, so U. S. Trustee was unaware of the necessity to provide notification and certification of Spouse's U.S. citizenship. Therefore, neither a Form 706-QDT (U.S. Estate Tax Return for Qualified Domestic Trusts) nor an extension for filing the Form 706-QDT was ever filed, to terminate the QDOT. Upon discovery of this failure, U.S. Trustee promptly notified the IRS before Date 4 and, thereafter, promptly submitted this private letter ruling request.

Law and Analysis:

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Section 2056(d)(1) provides that, except as provided in paragraph (2), if the surviving spouse is not a citizen of the United States, no deduction shall be allowed under § 2056(a). Section 2056(d)(2) provides that paragraph (1) shall not apply to any property passing to the surviving spouse in a QDOT.

There are three main requirements under § 2056A that must be satisfied in order for a trust to be a QDOT. The trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation, and provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic

corporation has the right to withhold from the distribution the tax imposed by § 2056A on the distribution. In addition, the trust must meet the requirements of regulations that are prescribed to ensure the collection of any federal estate tax imposed by § 2056(b)(1). Finally, the executor must make an election under that section on the federal estate tax return to qualify the property for the federal estate tax marital deduction.

Section 2056(b)(1) provides that an estate tax is imposed on — (a) any distribution before the date of death of the surviving spouse from a qualified domestic trust, and (B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

Section 2056A(b)(12) provides, in part, that if the surviving spouse of the decedent becomes a citizen of the United States and if such spouse was a resident of the United States at all times after the date of death of the decedent and before such spouse becomes a citizen of the United States, then the tax imposed by § 2056A(b)(1)(A) shall not apply to any distributions after such spouse becomes a citizen, and the tax imposed by § 2056A(b)(1)(B) shall not apply.

Section 20.2056A-10(a)(1) and (2) of the Estate Tax Regulations provides, in part, that a QDOT is no longer subject to the § 2056A estate tax if the surviving spouse becomes a citizen of the United States and the spouse was a resident of the United States at all times after the death of the decedent and before becoming a United States citizen; and the U.S. Trustee of the QDOT notifies the Internal Revenue Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706-QDT on or before April 15th of the calendar year following the year in which the surviving spouse becomes a United States citizen, unless an extension of time for filing is granted under § 6081.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation and not expressly provided by statute. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity of the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, U.S. Trustee is granted an extension of time of 120 days from the date of this letter to file the required notice and certification that Spouse has become a United States citizen. The required notice and certification should be made on Form 706-QDT. The Form 706-QDT should be filed with the Department of the Treasury, Internal Revenue Service, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the form. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Lorraine E. Gardner

By:

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

cc: Copy of this letter
Copy for § 6110 purposes

cc: